



Capital One Financial Corporation

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January 12, 2004

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
Office of the Secretary
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551
Attention: Docket No. R-1175

Federal Trade Commission
Office of the Secretary
Room 159-H
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
Attention: Proposed Effective Dates for the FACT Act, Project No. P044804

Re: Proposed Effective Dates for the Fair and Accurate Credit Transactions
Act of 2003 -- Comments of Capital One Financial Corporation

Dear Ladies and Gentlemen:

Capital One Financial Corporation ("Capital One") appreciates the opportunity to comment on the Joint Notice of Proposed Rulemaking ("Proposed Rule") of the Board of Governors of the Federal Reserve System and the Federal Trade Commission (collectively, the "Agencies") published in the Federal Register on December 24, 2003, concerning the proposed effective dates for provisions of the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act") for which effective dates were not included in the statute itself.

Capital One had 46.4 million customers and \$67.3 billion in managed loans outstanding, as of September 30, 2003. A Fortune 200 company, Capital One is one of the largest providers of MasterCard and Visa credit cards in the world. Capital One also offers automotive financing through its Capital One Auto Finance business. To conduct its consumer lending businesses and successfully manage the cost of credit, Capital One relies significantly on the uniformity provided by the Fair Credit Reporting Act, as amended by the FACT Act.

Capital One supports the Agencies' Proposed Rule establishing a schedule of effective dates. However, we note that section 214(b) may allow the Agencies to set an effective date for section 214 that could be later than December 1, 2004.

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March 31, 2004 Effective Date

We support the Agencies' proposal to establish March 31, 2004 as the effective date for the provisions in the FACT Act that clarify or address rights and requirements under the Fair Credit Reporting Act that are self-effectuating and that the Agencies believe will not require changes in existing systems, practices or disclosures. We agree with the Agencies' determination and believe that these provisions should not require significant changes to existing business practices conducted by financial institutions. Accordingly, the proposed March 31, 2004 effective date is appropriate.

December 1, 2004 Effective Date

We also support the Agencies' proposal to establish December 1, 2004 as the effective date for the provisions that would require significant changes to existing business practices. December 1, 2004 is consistent with the ten-month maximum provided in the statute for effective dates established by the Agencies under section 3 of the FACT Act. In general, we agree with the determination of the Agencies regarding the effective date for these provisions of the FACT Act. However, we do not agree with the Agencies' proposed December 1, 2004 effective date for section 214(a) of the FACT Act regarding affiliate sharing solicitation requirements. We believe that the proposed effective date for section 214(a) would be inconsistent with the statutory language of the FACT Act, and it conflicts with the legislative intent with respect to the notices required for affiliate marketing solicitations under this section of the Act.

Effective Date for Section 214(a)

The Agencies' proposal of a December 1, 2004 effective date for section 214(a) is inconsistent with the time frame contemplated by the statute itself. The effective date for section 214(a) is beyond the scope of section 3 of the FACT Act, because the effective date for that section is already provided in section 214(b) of the FACT Act. Specifically, section 214(b) directs the agencies to issue the regulations in final form no later than nine months after the date of enactment (specifically, by September 4, 2004), and provides that the regulations must be effective no later than six months after the date the regulations are issued (specifically, by March 4, 2005). Therefore, the Agencies' proposal of a December 1, 2004 effective date for section 214(a) is inconsistent with the time frame contemplated by the statute itself. Section 214(b) contemplates that the rules adopted under section 214(b) should establish the effective date for section 214(a). Accordingly, that date should be established in the context of that specific rulemaking.

Also supporting this position, we note that one of the substantive provisions in section 214(b) of the FACT Act permits the affiliate marketing solicitation notice to be coordinated and

consolidated “with any other notice required to be issued under any other provision of law,” such as the Gramm-Leach-Bliley Act (“GLBA”) privacy notice. In prescribing the implementing regulations, the agencies must, among other things, ensure that financial institutions are able to coordinate and consolidate the affiliate marketing solicitation and the GLBA notices as contemplated by section 624(b) of the FCRA. Moreover, the legislative history to section 214 provided by Representative Oxley, Chairman of the House Committee on Financial Services, on behalf of himself and Representative Bachus, the original sponsor of the FACT Act and the Chairman of the House Subcommittee on Financial Institutions and Consumer Credit, confirms the legislative intent as to the timing of the notice delivery. Specifically, this legislative history explains that the provision permitting the combination of the section 214 notice with the GLBA notice is “intended to allow an entity to time its notice to a consumer (after the effective date of the regulations) in the next regularly scheduled mailing to that consumer of other legally required notices. This coordination and consolidation is intended to reduce consumer confusion and avoid duplicative notices and disclosures.” In accordance with this objective, the effective dates provided in the FACT Act regarding the notice requirements for affiliate marketing solicitations are fully consistent with the schedule for the development and mailing of the GLBA privacy notices that have been adopted by many financial institutions.

As a result, the proposed effective date for section 214(a) conflicts with the statutory language and legislative intent of section 214. The effective date for section 214(a) cannot be determined until the regulations implementing the requirements of that section are promulgated in final form. Therefore, the Agencies’ final rule implementing the effective dates under section 3 of the FACT Act should not apply to section 214(a) of the Act.

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Capital One appreciates the opportunity to submit comments on this important topic. If you have any questions concerning these comments, or if we may otherwise be of assistance in connection with this matter, please do not hesitate to contact me at (703) 720-2266.

Sincerely,

/s/ Andres L. Navarrete

Andres L. Navarrete
Director and Associate General Counsel,
Regulatory Affairs
Capital One Financial Corporation